CF0000060983

Cri A 945/96 (2)

XII—160
Jail

Division Bench (Criminal)

APPEAL OF PRISONER

No. 952, Name लूथरा

Father's name गुंगा, Caste

Residence मेवड़ी, Age 35 वर्ष

sentenced to आजीवन कारावास on 16-4-96

under section 302 भादवि, by श्री जगदम्बा प्रसाद न्यायाधीश अम्बिकापुर

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner, the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner, the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement
2. Date on which copy received 16.04.96
3. Date on which appeal sent
4. Whether the prisoner wishes to be represented or not

No. 952 Name लूथरा s/o गुंगा

confined in Ambikapur Jail.

No. 1004 dated 18.4.96 19

Forwarded to the Deputy Commissioner C/M Ambikapur

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न निर्णय प्रति चार पन्नों में

Superintendent
अधीक्षक
केन्द्रीय जेल अम्बिकापुर (सरगुजा) Jail.

Date of receipt in Deputy Commissioner's Office 18/4/96

Date of receipt of record to accompany the Memo of Appeal to the Appellate Court 16/5/96 Cri A in time

माननीय उच्च न्यायालय बिलासपुर

No. 0 dated 16/5/96 19

Forwarded to the माननीय उच्च न्यायालय बिलासपुर

(डी० एन० पटेल)
Deputy Commissioner
जिला मजिस्ट्रेट
अम्बिकापुर जिला सरगुजा (म० प्र०)

Date of receipt in Appellate Court

(P. T. O.)

XI-HC-22

(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA. 945/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

13-1-2006

Shri Abhay Tiwari, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dias*.

PER L.C. BHADOO, J.

By this appeal under Section 374 (2) of the Cr.P.C. the accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 16-4-96 whereby learned first Additional Sessions Judge, Surguja after holding the accused/appellant guilty for commission of murder of his wife Maya convicted him under section 302 of the I.P.C. and sentenced him to undergo imprisonment for life, and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo imprisonment for 6 months.

The case of the prosecution, in brief, is that in the night of 13-2-94 the accused asked for the meal from his wife Maya. As the meal was not ready, the accused started assaulting his wife Maya with the hand and fists, picked up a burning wood and assaulted with the same on her neck, as a result of which she died. The matter was reported by Balam Kodaku on 16-2-94 at about 9.20 p.m.. After receiving this report, the crime was registered at Sr. No.18/94. The S.H.O. proceeded to the scene of occurrence, after giving notice Ex.-P/1 to the Panchas, prepared Panchanama (Ex.-P/2) of the dead body of the deceased. He took into possession the piece of wood under Ex.-P/3. He also took into possession the blood stained soil and plain soil from

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the place of occurrence. He prepared site plan Ex.-P/5. The dead body was sent for postmortem examination to the Community Health Centre, Rajpur where Dr. Pritam Ram (PW-4) conducted postmortem on the dead body of the deceased and opined that cause of death was syncope due to haemorrhage on account of rupture of liver and spleen. The nature of death was homicidal.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, first Class, Ambikapur who in turn committed the case to the Sessions Judge, Ambikapur from where learned First Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined four witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties, perused judgment and evidence available on record.

The homicidal death of the deceased is not in dispute.

As far as involvement of the accused in committing murder of his wife is concerned, the father of the accused has turned hostile. The conviction rests on the extra judicial confession made by the accused before PW-3 Chhote Somar. PW-3 has stated that at about 12 p.m. the accused came to him and stated that he has assaulted his wife with a burning wood, hand and fists, and she is not speaking, therefore, you come and see her. On this, he went and saw that Maya was already dead. In the cross-examination, he has

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stated that the accused has not stated that he has assaulted his wife with the burning wood. But the fact remains that the accused made extra judicial confession voluntarily and same was true because this witness immediately went to the scene of occurrence and saw Maya dead. The extra judicial confession was prompt also. Further the said extra judicial confession lends support form the postmortem conducted by PW-4 Dr. Pritam Ram. Therefore, we do not find any illegality and infirmity in the finding of the trial Court regarding involvement of the accused in committing crime in question.

Learned counsel for the accused/appellant argued that the accused/appellant asked for the meal and when meal was not provided, he became ~~enraged~~ Kangery and in a fit of anger, without any intention to cause death of his wife, he assaulted with hand and fists. The injury was not caused on any vital organ, somehow his hand landed on a place by which spleen and liver of Maya were ruptured, therefore, offence against the accused/appellant does not travel beyond Section 304-II of the I.P.C. He placed reliance on the decision of the Hon'ble Apex Court in the matter of **Karam Singh V. State of Punjab** reported in **1994 SCC (Cr) 64.**

On the other hand, Shri U.N.S. Deo and Shri Mishra supported the judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the accused/appellant we have perused evidence of the doctor and postmortem report. He has opined that the deceased died on account of rupture of spleen and liver on account of excessive bleeding. There is nothing on record which shows that the accused assaulted his wife with the intention to cause her death. As the food was not provided to the accused, he became ~~enraged~~ Kangery and all of a sudden, without pre-meditation, in a sudden quarrel, he attacked his wife, and fists landed on the part of body where spleen and liver were there. On account of that assault spleen and liver

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ruptured. Therefore, we are of the opinion that the offence against the accused/appellant does not travel beyond Section 304-II of the I.P.C. and we are fortified in our opinion by the judgment cited by learned counsel for the accused/appellant. In that case, the accused assaulted Nahar Singh and he received as many as 10 injuries and 5-7 ribs were fractured. Spleen and liver were also ruptured. The Hon'ble Apex Court held that in the circumstances, intention cannot be attributed to the accused for causing death. However, from the circumstances, it must be attributed to the accused to have knowledge by dealing such blows he was likely to cause death of the deceased. Facts of the present case are also similar and the knowledge can be attributed to the accused that by fists blows he was likely to cause death of his wife Maya.

In the result, the appeal partly succeeds. The conviction and sentence awarded under Section 302 of the I.P.C. against the accused/appellant are set aside, instead thereof, the accused/appellant is convicted for commission of offence under Section 304-II of the I.P.C. and sentenced to undergo R.I. for 10 years. From the judgment of the trial Court it is evident that the accused/appellant remained in the custody since 21-2-94 thereby he is in custody for about 11 years, 11 months. Therefore, he has already undergone the sentence. The accused/appellant be released forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Barve

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